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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

SARAH LEWIS, Plaintiff and Respondent, v. JAMES RAY DACK, Defendant and Appellant.	A134744 (San Francisco City & County Super. Ct. No. FDV-11-808657)

Plaintiff Sarah Lewis, aka "Amy Heart," was a $500 an hour "escort" in her early twenties. She met defendant James Ray Dack, a man approximately twice her age, who was going through a divorce. They spent some time together socially for approximately one month. A considerable portion of this social interaction involved defendant giving plaintiff money for her time and physical attentions. Then defendant allegedly lured plaintiff to a hotel room and assaulted her. Plaintiff invoked the Domestic Violence Prevention Act (the Act) (Fam. Code, § 6200 et seq.)[1] and obtained a five-year domestic violence "stay-away" restraining order against defendant. On appeal, defendant contends the family court did not have jurisdiction to issue the restraining order because plaintiff did not belong to one of the categories of protected persons under the Act. Defendant argues the two were not in a "dating relationship," as defined by section 6210. We agree and reverse.

[1] Subsequent statutory references are to the Family Code unless otherwise indicated.

I. FACTS

When her application for a restraining order came on for hearing, December 8, 2011, plaintiff was 24 years old. She testified she worked as an escort for a living and also did photo shoots for a bikini company.

Plaintiff met defendant in a hotel bar toward the end of April 2011. He bought her a drink and gave her his business card.

Plaintiff texted defendant the next day or "soon after," and defendant invited plaintiff to dinner at a sushi restaurant. After dinner, they went to a nightclub and danced. Defendant wanted to go to a motel room, but plaintiff was not interested and told him so. She also told defendant she "was [an] escort for a living." Defendant dropped plaintiff off at her apartment.

Defendant texted her the next day and asked her to meet him for lunch. His interest seemed to her to be romantic. Plaintiff again told defendant she was an escort. Defendant invited her to a Giants game on May 6, 2011 at AT&T Park. They attended the game and walked back to plaintiff's apartment, which was near the ballpark. They "ma[de] out," but did not have sex.[2]

Defendant texted plaintiff about meeting him to watch a boxing match on pay-per-view at "The Parlor." She responded, her "time" was "valuable," and her "work is [her] priority." Defendant offered plaintiff $1,000 to meet him at The Parlor and give him a big kiss. She did, but defendant was not satisfied with the kiss. They then went to The Gold Club, a strip club, but they did not have sex that night.

On May 7, 2011, plaintiff told defendant "if he wanted [her] undivided attention," and for her to "make him a priority," "there would . . . have to be some kind of financial arrangement." She also told him she "didn't do boyfriends" because she did not have time and was "putting all [her] energy into [her] regulars." At some point, she referred to her charges as $500 an hour or $3,000 a day.

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[2] In his responsive declaration to plaintiff's application for a restraining order, defendant stated he did not know plaintiff was an escort until after the Giants game.

In response to this, or some other message referring to her "regulars," defendant responded, "fuck boyfriend action. We are on the same page." Plaintiff understood that to mean defendant "wanted to have a no strings attached relationship beyond just the transactional meet at a hotel room. But . . . not a traditional boyfriend/girlfriend relationship." But confusingly, plaintiff also testified defendant was not to be paying her for sex, but to be spending time with him as "[h]is arm candy."[3]

A week later, defendant offered plaintiff another $1,000 and a promissory note for some stock in exchange for another kiss. She met him in The Gold Club and kissed him. Defendant gave her $1,000 in an envelope, and a card that said "Congratulations. You are a stockholder," and three wool scarves. The two then went to plaintiff's apartment where they had brief, protected sexual intercourse. They stopped because defendant did not want to use a condom, but plaintiff did.

The next day, plaintiff told defendant to stop calling her. Defendant reinitiated contact. Plaintiff told him she "didn't want anything to do with him." Defendant delivered flowers, lingerie and cards to her apartment building. Plaintiff asked defendant to stop texting her.[4]

On May 13, 2011, defendant gave plaintiff $1,000 for a kiss. She discontinued communication with him.

On May 24, 2011, plaintiff received a text from "Milo," who wanted an appointment. She agreed to go to the Westin St. Francis Hotel, where "Milo" would leave the room key in the door. Plaintiff walked into the room and saw no one. Then she saw defendant hiding behind the door. She started to scream. Defendant put a towel over her mouth, told her to "shut up," and threw her on the bed. He broke off three of her fingernails. She tried to call 911, but defendant threw her phone on the floor. The room

[3] Although the record is unclear, it seems around this time defendant texted plaintiff that he was lonely and wanted a romantic relationship. She responded she did not want defendant as her boyfriend and was not interested in continuing a relationship.

[4] Plaintiff admitted using two cell phones, one for personal use and one for her escort persona of "Amy Heart." The texts from defendant were sent to her personal cell phone.

phones were unplugged. Plaintiff feared for her life. She finally managed to call 911 and report she was being held against her will. Defendant told her to "get the fuck out." She left.

Plaintiff called defendant as a witness. He testified plaintiff "ripped [him] off." He claimed in the Westin St. Francis Hotel bedroom he was only trying to get his money back. He denied striking plaintiff's phone from her hand and denied she tried to use the room phones. He admitted paying $1,000 for a kiss was his idea. When he offered plaintiff money for kisses, he did so with "sexual expectations," that is to say, "intercourse." He described himself as a "client" of plaintiff's.

The trial court, noting it was entering "uncharted territory," issued the restraining order. The court noted the physical risks faced by women working as escorts. The court also noted that "most relationships . . . have a lot of economics in the background." The court found the relationship was at first a "casual undertaking" on defendant's part, with "probably some sincere interest of kind of him finding some pleasure . . . ." The court found the relationship to have been very intense and complex over a relatively short period of time, with plaintiff being "sincerely scared early on."

Noting there wasn't much law to guide it, the trial court concluded the relationship fell under the Act. The court granted the order because "this is a relationship that needs protection for [plaintiff], and I would not be doing my job if I wouldn't be granting it."

II. DISCUSSION

The Act authorizes the issuance of protective orders restraining domestic violence on several categories of persons, including present and former spouses or cohabitants and "[a] person with whom the respondent is having or has had a dating or engagement relationship." (§ 6211, subds. (a), (b) & (c).) The only protected category of persons listed in section 6211 that could possibly trigger the applicability of the Act in the present case is a person in a present or former "dating relationship." Section 6210 defines "dating relationship" as "frequent, intimate associations primarily characterized by the expectation of affection or sexual involvement independent of financial considerations."

The question before us is simple: on the facts in the record, was the relationship between plaintiff and defendant a "dating relationship"? We conclude it was not.

For context, we begin with *Oriola v. Thaler* (2000) 84 Cal.App.4th 397 (*Oriola*), a case which developed a judicial definition of "dating relationship" before the Act itself defined that phrase in section 6210, enacted in 2001. (Stats. 2001, ch. 110, § 1, pp. 1145–1146.) After reviewing the history of dating and statutory definitions of "dating relationship" from other states (*Oriola*, *supra*, at pp. 407–411), the court derived this definition: "[F]or purposes of the Act, a 'dating relationship' refers to serious courtship. It is a social relationship between two individuals who have or have had a reciprocally amorous and increasingly exclusive interest in one another, and shared expectation of the growth of that mutual interest, that has endured for such a length of time and stimulated such frequent interactions that the relationship cannot be deemed to have been casual." (*Id.* at p. 412.)

People v. Rucker (2005) 126 Cal.App.4th 1107 (*Rucker*) was decided after section 6210 was enacted. The defendant argued that a prior incident of domestic violence was improperly admitted against her, because she was not in a "dating relationship" with her attempted murder victim. (*Rucker, supra*, at p. 1114; see *id.* at p. 1110.) The court noted *Oriola*'s definition was not pertinent since it predated section 6210, whose definition of "dating relationship" appeared in the battery statute at subdivision (f)(10) of Penal Code section 243. (*Rucker, supra*, at p. 1116.)

The *Rucker* court interpreted the legislative definition of "dating relationship" as not requiring serious courtship, increasingly exclusive interest, shared expectation of growth, or an enduring relationship over a length of time. (*Rucker, supra*, 126 Cal.App.4th at p. 1116.) "The statutory definition requires 'frequent, intimate associations,' a definition that does not preclude a relatively new dating relationship. The Legislature was entitled to conclude the domestic violence statutes should apply to a range of dating relationships. The Legislature could reasonably conclude dating relationships, even when new, have unique emotional and privacy aspects that do not

exist in other social or business relationships and those aspects may lead to domestic violence early in a relationship." (*Ibid.*)

The present case involves a brief relationship, but the length of the relationship is not controlling. Likewise, we need not discuss the various factors advanced by the parties that would typify a dating relationship, such as expectations, holding oneself out as "boyfriend" or "girlfriend," etc. What controls here is the dependency of this relationship on financial considerations, which removes it from the purview of the domestic violence statutes. Nothing in the somewhat ambiguous findings of the trial court changes the fact that the relationship between plaintiff and defendant, despite the latter's original but short-lived personal interest in the former, was predominantly dependent upon financial considerations.

Plaintiff disputes this point by referring to several text messages that purportedly show personal affection between the parties. But only two such messages were even identified as exhibits at the hearing, and it appears that none of the texts between the parties were ever admitted into evidence. The two exhibits apparently refer to defendant's proposed shopping trips to Miami. Plaintiff argues that *Rucker* applied the domestic violence statutes to a relationship "where, as here, a man attempted to ply a woman with gifts and offers of trips to Hawaii." Apart from the geographic confusion, this is a misreading of the facts in *Rucker*. The man in that case did propose a weekend trip to Hawaii, but otherwise the facts showed a lengthy, committed personal relationship with the contemplation of marriage. (*Rucker, supra,* 126 Cal.App.4th at pp. 1110, 1117.)

In contrast, the present case involves a relationship dependent upon financial considerations: the payment of thousands of dollars for kisses, and the explicit understanding that defendant would be a client of plaintiff's and pay her for her time and her attention, whether as "arm candy" or a sexual partner. Plaintiff is an escort and defendant was her client. We do not imply that women in the escort business do not engage in "dating relationships"—we simply find such a relationship is absent in the present case. We also do not imply that women in the escort business are not at some risk and are not entitled to protection from harassment, stalking, violence, or the like.

But unless they are in a dating relationship with someone, they are limited to the harassment injunctions available under Code of Civil Procedure section 527.6.[5]

In short, there was no "dating relationship" between plaintiff and defendant because their relationship was not "independent of financial considerations" within the meaning of section 6210. Thus, the trial court lacked authority to issue a domestic violence restraining order.

III. DISPOSITION

The domestic violence restraining order is reversed and the matter is remanded to the trial court with instructions to vacate the order. This decision is without prejudice to any application by plaintiff for a harassment injunction under Code of Civil Procedure section 527.6.

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Sepulveda, J.*

We concur:

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Margulies, Acting P.J.

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Banke, J.

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Four, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

[5] The domestic violence restraining orders are more severe. For instance, they must be reported to law enforcement and stored in the California Law Enforcement Telecommunications System computer system. (§ 6380, subds. (d) & (e).) They also prevent the restrained party from possessing a firearm.